

FILED '09 NOV 17 15:13 USDC-ORE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

THADDEUS A. STACY,

Plaintiff,

Civil No. 09-782-TC

v.

FINDINGS AND
RECOMMENDATION

ANDY MCCOOL, et al.,

Defendants.

COFFIN, Magistrate Judge.

By Order (#5) entered August 6, 2009, plaintiff was directed to notify the court within 30 days whether or not he authorizes the withdrawal of the filing fee from his prisoner trust account. Despite extensions of time in which to do so, plaintiff has not advised the court regarding the withdrawal of the filing fee as ordered.

In addition, plaintiff has been allowed two extensions of time to file an amended complaint. See, (#7) and (#10). Plaintiff's amended complaint and notification to the court regarding the filing fee was due November 11, 2009. Id.

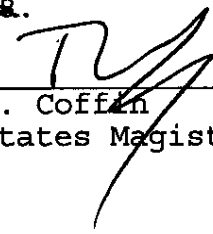
Plaintiff has not notified the court regarding the withdrawal of the filing fee or filed an amended complaint.

Plaintiff's application to proceed in forma pauperis (#1) should be denied. This action should be dismissed for failure to prosecute and for failure to comply with an order of the court.

Plaintiff Motion for appointment of counsel (#3) should be denied as moot.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten days from the date of service of a copy of this recommendation within which to file specific written objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issue and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 17 day of November, 2009.



Thomas M. Coffey
United States Magistrate Judge